

## § 21.7642

school terms from one approved institution of higher learning to another for the purpose of enrolling in, and pursuing, a similar course at the second institution of higher learning. If the interval between terms does not exceed 30 days, VA shall, for the purpose of paying educational assistance, consider the reservist to be enrolled in the first institution of higher learning during the interval.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(c) *Payee.* (1) VA will make payment to the reservist or to a duly appointed fiduciary. VA will make direct payment to the reservist even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of §§21.4146 (a), (b), (c) and (e) of this part to 10 U.S.C. chapter 1606 in a manner not inconsistent with the way in which they are applied in the administration of 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680, 5301(a))

(d) *Advance payments.* VA will apply the provisions of §21.4138(a) in making advance payments to reservists.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(e) *Frequency of payment.* Except as provided in §21.4138(a), VA shall pay educational assistance in the month following the month for which training occurs. VA may withhold payment to a reservist who is enrolled in a course not leading to a standard college degree for any month until the reservist's attendance has been reported for that month. VA may withhold final payment in all cases until it both receives certification that the reservist pursued his or her course, and makes any necessary adjustments.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g))

## 38 CFR Ch. I (7-1-04 Edition)

(f) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(Approved by the Office of Management and Budget under control number 2900-0073)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29306, June 10, 1996; 61 FR 29482, June 11, 1996; 64 FR 52652, Sept. 30, 1999]

### § 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. Chapter 1606 and any of the following provisions of law—

(1) 38 U.S.C. ch. 30;

(2) 38 U.S.C. ch. 31;

(3) 38 U.S.C. ch. 32;

(4) 38 U.S.C. ch. 34;

(5) 38 U.S.C. ch. 35;

(6) 10 U.S.C. ch. 107;

(7) Section 903 of the Department of Defense Authorization Act, 1981;

(8) The Hostage Relief Act of 1980; or

(9) The Omnibus Diplomatic Security Act of 1986.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3695; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; secs. 642(c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(b) *Election of benefits.* When paragraph (a) of this section applies, the reservist must elect in writing which benefit he or she wishes to receive. The reservist may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3695; Pub. L. 98-525)

(c) *Senior Reserve Officers' Training Corps scholarship program.* Educational assistance may not be provided to a reservist receiving financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(d) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

## Department of Veterans Affairs

## §21.7644

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3681; Pub. L. 98-525)

(e) *Service Members Occupational Conversion and Training Act of 1992.* A reservist may not receive educational assistance under the Montgomery GI Bill—Selected Reserve program during the period for which benefits are payable under the Service Members Occupational Conversion and Training Act of 1992.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9628, Mar. 7, 1991; 61 FR 20729, May 8, 1996; 61 FR 29307, June 10, 1996]

### §21.7644 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of §§21.4008 and 21.4009 of this part in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36. See §21.7633.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690(b); Pub. L. 98-525)

(b) *Penalties are not overpayments.* The Secretary concerned may require a refund from an individual who fails to participate satisfactorily in required training as a member of the Selected Reserve. This refund is subject to waiver by the Secretary. However, this refund—

(1) Is not an overpayment for VA purposes, and

(2) Is not subject to waiver by VA under §1.957 of this chapter.

(Authority: 10 U.S.C. 16135; Pub. L. 98-525)

(c) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a reservist constitutes a liability of that reservist unless—

(i) The overpayment is waived as provided in §1.957 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See §21.7635(o) of this part.

(2) The amount of the overpayment of educational assistance paid to a reservist constitutes as liability of the educational institution if VA determines that the overpayment was made as the result of—

(i) Willful or negligent false certification by the educational institution, or

(ii) Willful or negligent failure to certify excessive absences from a course, or discontinuance or interruption of a course by the reservist.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3685; Pub. L. 98-525)

(d) *Waiver of recovery of overpayments.*

(1) Except as stated in paragraph (b) of this section in determining whether an overpayment should be waived or recovered from a reservist, VA will apply the provisions of §1.957 of this chapter.

(2) In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of §21.4009(a)(2), (3), (4), and (5), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this part to overpayments of educational assistance under 10 U.S.C. chapter 1606 in the same manner as they are applied to overpayments of educational assistance allowance under 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3685, 5302; Pub. L. 98-525)

CROSS-REFERENCE: Entitlement charges. See §21.7576(c) of this part offering training to veterans and servicemembers under 38 U.S.C. ch. 34.

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996]